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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/07/2004

Yasuo Ohdaira

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EXAMINER

SAYALA, CHHAYA D

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/507,170	Applicant(s) OHDAIRA ET AL.	
	Examiner C. SAYALA	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☒ Claim(s) 14 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/13/2007, 3/28/2007(2), 1/19/2005, 11/3/2004.</u> | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

1. Claim 14 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from another multiple dependent claim. See MPEP § 608.01(n).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 8-11 are rejected under 35 U.S.C. 102(a) as being anticipated by EP 1155623.

The patent teaches Grifola in the form of an extract, in the dried form (paragraph [0010], claim 1) for feeding animals in an amount 0.01 – 20 wt % (claim 4); wherein the animal is a mammal, chicken or pig (paragraph [0013]). The fungi is said to be an antimicrobial (paragraph [0016]) and as a growth promoter (paragraphs [0011] and [0014]).

Note that claims 2-3 are written in a product by-process format and "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). In re Brown, 459 F.2d 531, 535, 173 USPQ 685, 688 (CCPA 1972).

3. Claims 1-3, 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 2000032924

The patent shows feeding horses extract or powder of maitake mushroom, which gives improvement in health condition, as well as acts as an immunostimulant. The amount is given as 60-525 mg/kg/day. A horse is a domestic animal bred for its meat too.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP '623 or JP'924 in view of JP 2000119650.

The primary references are as described as above. Even though, these claims are to a product and not the process it is made by, this rejection is being made to show that the JP '650 discloses all the process steps claimed herein. See paragraph [0014] and [0017] – [0019], and to perform such steps to produce the Grifola additive of the prior patent would have been obvious.

5. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP '623 and JP 2000-032924 in view of Song et al. (US Patent 6737065) and Suzuki et al. (see IDS filed 11/3/04, Reference A6)

Both the primary patents teach the benefits of feeding Grifola to domestic animals in the amounts claimed. They do not expressly state that the meat is of good flavor. Song et al, and Suzuki et al., both teach that the quality of the meat is improved by feeding such mushrooms, see '065 abstract and claims, which disclose that Grifola, one of the mushrooms fed to ducks gave meats with excellent taste and quality, while Suzuki et al teach maitake mushroom improved the quality of cattle overall, which renders obvious that the meat had good flavor, since good quality meat results in having good flavor.

6. Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP'623 or JP '924 in view of JP 03-076539 and Protti (5536509)

The primary references have been discussed above. JP '539 teaches adding yeast in dairy feed to increase animal weight. Note the amounts. Protti teaches yeast as improving health and growth of cattle, horses and chicken, and note the amounts shown. See abstract and claims 7, 9 and 10 etc. To combine the composition containing Grifola with that of yeast, each shown useful for its own purpose, and to optimize amounts within those shown so as to produce optimum beneficial results would have been obvious and within the ambit of ordinary skill. Note that Grifola has been shown to be a growth promoter by the EP patent and Protti teaches the yeast also as improving growth.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

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more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. SAYALA/

Primary Examiner, Art Unit 1794